

CASE NO. 08cv 1589

ATTACHMENT NO. 10

EXHIBIT

TAB (DESCRIPTION)

Did you understand his question?

THE WITNESS: There is always a lot of people out there.

MR. RONKOWSKI: Q How many people were out there, in front of your house, when the police were there?

MS. PLACEK: Objection, presuming.

THE COURT: Overruled.

MR. RONKOWSKI: Q How many?

A No one was in front of our house.

Q You are not saying there was quite a few people out?

A They were just in the area, in the neighborhood.

Q How many people out in front of your house, in the area?

A No one was in front of our house. The people were like across the street, on the corners.

Q How many people?

A I didn't count heads.

Q Hundreds?

A No.

Q Dozens?

A A few.

Q Twenty to 30?

A I don't even think it was that many.

1 Q Would you say there was quite a few people
2 across the street?

3 MS. PLACEK: Well, Judge, again, I am going to
4 object.

5 THE COURT: The objection is sustained.

6 MR. RONKOWSKI: Q Now, you are saying that the
7 police handcuffed your brother inside the house?

8 A Yes.

9 Q Did they do anything, other than handcuffing
10 the police in -- handcuffing your brother inside the
11 house?

12 A No.

13 Q And all four of these officers were in
14 uniform?

15 A No. Two were in uniform.

16 Q And two were in plainclothes?

17 A Yes.

18 Q Was the lady in uniform or in plainclothes?

19 A Uniform.

20 Q Where were those two officers?

21 A They were inside the house.

22 Q Now, when you said the police rang the door-
23 bell, how long before they entered the house?

24 A A few seconds. We were right there at the

1 door.

2 Q Did you hold the door open for them?

3 A We opened the door and they came in.

4 Q And who was the person that opened the door
5 for the police, after they rang the doorbell?

6 A Myself.

7 Q Did you have a conversation with the police
8 at that time or did you just let them in?

9 A I just let them in.

10 Q When you opened the door for the police,
11 did you see those people outside and across the street?

12 A Yes.

13 MS. PLACEK: Well, Judge, the witness spoke of
14 people hanging out in the neighborhood.

15 THE COURT: Those are the people she saw outside,
16 across the street. The answer will stand. Your objection
17 is overruled.

18 MR. RONKOWSKI: Q Did you recognize any of them?

19 A I know the people.

20 Q Who are they?

21 A My neighbors.

22 Q Do you know any of their names?

23 A Yes. They were kids.

24 Q When you say kids, how old are they?

1 A Fifteen, 16.

2 Q Anybody older than that?

3 A I don't know their ages, all their ages.

4 Q And when you opened the door to allow the
5 police in, how many kids did you see out in front of
6 your house?

7 MS. PLACEK: Judge, again, that's a misstatement
8 of the evidence.

9 THE COURT: The objection is sustained.

10 MR. RONKOWSKI: Q How many people were out there?

11 A They were across the street. It was a tavern
12 across the street. People hang in front of it.

13 Q Listen to the question.

14 How many people were out there when you
15 opened the door to the police?

16 MS. PLACEK: Judge, we have been through this
17 three times, with the State.

18 MR. RONKOWSKI: I haven't got an answer, how many.

19 MS. PLACEK: Just asked and answered.

20 THE COURT: Overruled.

21 Do you know how many people were there?

22 THE WITNESS: No.

23 THE COURT: Put another question.

24 MR. RONKOWSKI: Q Was there more than 20?

1 MS. PLACEK: Judge, again, --

2 THE COURT: Overruled.

3 THE WITNESS: I don't think so.

4 MR. RONKOWSKI: Q Was there more than ten?

5 A It may have been about the number.

6 Q Is this the crowd that diminished after the
7 police transported your brother from that scene?

8 A The crowd had diminished.

9 Q How many, how big did that crowd get at its
10 peak.

11 MS. PLACEK: Objection, Judge.

12 THE COURT: Overruled.

13 To the characterization of crowd, I will
14 sustain that objection. There were people out in the
15 street.

16 At the maximum, how many people did you
17 see?

18 THE WITNESS: About eight or nine.

19 THE COURT: Put another question, please.

20 MR. RONKOWSKI: Q Where was your mother when you
21 opened the door for the police?

22 A In the living room.

23 Q Who else was in the living room?

24 A Jerome.

1 Q Anybody else?

2 A Our neighbor.

3 Q What is your neighbor's name?

4 A Maria.

5 Q What is her last name?

6 A Fields.

7 Q Anybody else?

8 A No; that I remember.

9 Q What was your brother doing when you opened
10 the door for the police?

11 A He was still on the phone with my sister.

12 Q Did he hang up the phone then, when the police
13 came in?

14 A He was still talking to her.

15 Q Well, didn't he get off the phone when the
16 police walked up to him?

17 A When they walked up to him, yes, he got off.

18 Q Did the police have a conversation with your
19 brother?

20 A Not that I recall.

21 Q Did your brother say anything to the police?

22 A Not that I recall.

23 Q And the police immediately left with your
24 brother?

1 A Yes.

2 Q They were in your home for just a few seconds
3 then?

4 A Yes.

5 Q Now, did you see your brother's wrist?

6 A Yes.

7 Q And was your brother handcuffed while he was
8 in your house?

9 A Yes.

10 Q Was he handcuffed in front of him or behind
11 him?

12 A Behind him.

13 Q Did all four of these police officers exit
14 at the same time?

15 A Yes.

16 Q And did they enter at the same time?

17 A No.

18 Q Which two entered first?

19 A The plainclothesmen.

20 Q How long after they had entered did these
21 uniformed officers enter?

22 A A few seconds.

23 MR. RONKOWSKI: If I could have a moment, your
24 Honor.

Nothing further of this witness.

THE COURT: Redirect.

MS. PLACEK: Very briefly.

REDIRECT EXAMINATION

BY MS. PLACEK:

Q Ma'am, when the Assistant State's Attorney was asking you questions about the number of people, that was the average number of people that was always at that tavern, correct, in front of that tavern, across your house, correct?

A More or less.

Q Beg your pardon?

A More or less.

Q You saw nothing unusual about that, correct?

A No.

Q They weren't screaming at your brother?

A No.

Q They weren't screaming at your house?

A No.

Q They weren't screaming before the police came, were they?

A No.

Q They weren't screaming after the police came?

1 A No.

2 MS. PLACEK: Thank you.

3 That's all, judge.

4 THE COURT: Recross.

5 RECROSS EXAMINATION

6 BY MR. RONKOWSKI:

7
8 Q Of those people there, the most that was
9 there was nine?

10 MS. PLACEK: Judge, we went through this as to
11 number.

12 MR. RONKOWSKI: Foundation for the next series
13 of questions.

14 THE COURT: Put your next series of questions.

15 Objection sustained.

16 MR. RONKOWSKI: Q Was the oldest person there
17 17?

18 MS. PLACEK: Objection. She said she didn't know.

19 THE COURT: Objection is sustained.

20 MR. RONKOWSKI: Q Did these kids that you say
21 were out in front of your house, did they all come out
22 of the tavern?

23 MS. PLACEK: Objection again, out in front of
24 your house. We have been through this three times. It

1 isn't going to change.

2 THE COURT: Out in front of the house is stricken.
3 They're in the area.

4 Did they all come out of the tavern, if
5 you know?

6 THE WITNESS: No. They were just really hanging
7 around the tavern, outside the door.

8 THE COURT: Put another question.

9 MR. RONKOWSKI: Q How many people came out of
10 the tavern?

11 MS. PLACEK: Judge, there was never any evidence.

12 THE COURT: Overruled. If she knows, she may
13 answer.

14 THE WITNESS: I didn't see them coming out. They
15 were just hanging around the tavern door. I didn't see
16 them go in or come out.

17 MR. RONKOWSKI: Nothing further.

18 MS. PLACEK: Nothing further, your Honor. Thank
19 you.

20 THE COURT: Thank you, ma'am. You may also remain
21 in the courtroom, if you so desire.

22 (Witness excused.)

23
24 (Witness duly sworn.)

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1 THE COURT: Ma'am, that microphone is on. If
2 you will draw up close, speak directly into it, keep
3 your voice up, we'll all be able to hear you.

4 MS. PLACEK: May I proceed?

5 THE COURT: You may.

6
7 EARLINE HENDRICKS,
8 called as a witness on behalf of the Petitioner-Defendant
9 herein, having been first duly sworn, was examined and
10 testified as follows:

11 DIRECT EXAMINATION

12 BY MS. PLACEK:

13 Q Ma'am, would you state your first and last
14 name, spelling both for the purposes of the record.

15 A My name is Earline Hendricks, E-a-r-l-i-n-e,
16 Hendricks, H-e-n-d-r-i-c-k-s.

17 Q Now, ma'am, you are the mother of Jerome
18 Hendricks?

19 A I am.

20 Q And calling your attention to 1988,
21 approximately August 9, was he living with you?

22 A Yes, he was.

23 Q Now, calling your attention to the afternoon
24 hours, early evening hours, did you know where Jerome

1 was?

2 A He had been out looking for a job.

3 Q Now, you say he was out looking for a job.
4 From that job, did he have -- or from that task, did
5 he have occasion to come back home?

6 A Yes, he did.

7 Q Could you tell his Honor, Judge Holt, at
8 approximately what time he came home?

9 A I guess, about between 7:30 and 8:00 o'clock,
10 around there.

11 Q Now, at that time, did you have a conversation
12 with your son?

13 A Yes, I did.

14 Q Could you tell his Honor, Judge Holt, what
15 that conversation consisted of?

16 MR. RONKOWSKI: Objection.

17 THE COURT: Overruled. Hearsay is the basis of
18 the objection?

19 MR. RONKOWSKI: The fact that what she says is
20 irrelevant, unless the defendant relies on it. The
21 defendant hasn't testified to any of this.

22 THE COURT: Overruled.

23 MS. PLACEK: Judge --

24 Q Well, go on, ma'am, I'm sorry.

1 A Well, when Jerome came in, I told him that
2 the police was there and they left me a card and asked
3 me to call -- asked him to call when he comes in.

4 Q Now, let's talk a bit about the police. When
5 were the police there?

6 A They were there earlier part of the day.

7 Q Do you remember about what time?

8 A Well, it had to be after I got off from work.

9 Q And could you sort --

10 A About, I guess about 4:30, 5:00 o'clock.

11 Q You worked that day, correct?

12 A Yes, I did.

13 Q Could you tell his Honor, Judge Holt, where
14 you worked?

15 A I worked at my -- Weiss Memorial Hospital,
16 at 4646 Marine Drive.

17 Q What is your position at Weiss?

18 A I was cashier there.

19 Q Thank you.

20 Now, Ma'am, when you told Jerome that
21 the police had come and asked him to call, did he, in
22 fact, make a phone call?

23 A Yes, he did.

24 Q Did you see him make a phone call?

1 A Yes, I did.

2 Q And what, if anything unusual, happened after
3 he made that phone call?

4 A Well, after he called the police, they came.

5 Q When you say they, did you recognize those
6 officers?

7 A Well, it was four police that came, two in
8 plainclothes and two in uniform.

9 Q Were they white or black?

10 A All of them were white.

11 Q Did you recognize any of them from previous?

12 A No, not really, no.

13 Q And what, if anything unusual, happened at
14 that time?

15 A Well, after he called, it wasn't too long be-
16 fore they came, and they came and they rang the bell, and
17 we opened the door and let them in, and they asked where
18 was Jerome. As soon as they identified themselves, they
19 took him and put handcuffs on him. I asked them why were
20 they putting handcuffs on him, if they were just going to
21 talk to him.

22 Q What did they say?

23 A They didn't say anything to me. They just
24 took him on out. The lady police told me don't worry.

1 Q Now, ma'am, did you happen to see them when
2 they took him out of your house?

3 A Yes, I did.

4 Q Was there a crowd screaming for Jerome's blood,
5 in your yard?

6 A No.

7 Q Was there anyone throwing rocks or hitting him
8 with boards, in your yard?

9 A No.

10 Q Did you see the police have to protect Jerome
11 in any way, shape, or manner, after they had arrested him?

12 A No.

13 MS. PLACEK: Thank you, your Honor. That's all I
14 would have.

15 THE COURT: Cross.

16 CROSS EXAMINATION

17 BY MR. RONKOWSKI:

18 Q Ma'am, you were there when the police were let
19 in?

20 A Yes, I was.

21 Q Was it you or your daughter that opened the
22 door for the police?

23 A I disremember. I think it was my daughter,
24

1 I'm not sure.

2 Q That was after they rang the doorbell?

3 A Yes.

4 Q The police were inside only a matter of a few
5 seconds, correct?

6 A Correct.

7 Q When you opened the door, how many people
8 could you see out in front of your house?

9 MS. PLACEK: Objection, presuming, Judge.

10 THE COURT: Overruled.

11 THE WITNESS: We could see out our door, because
12 our front door was open and we had a screen door up, so
13 we could see out all the time.

14 MR. RONKOWSKI: Q How many people did you see
15 out there?

16 A Nobody, really.

17 Q The only people that were outside your house
18 was the police, which you let in?

19 A Well, I guess it was people out there, but
20 they weren't around my house.

21 Q How many people could you see out there?

22 MS. PLACEK: Well, Judge, again, there would be an
23 objection as for clarification of the question.

24 THE COURT: Overruled. If she understands, she may

1 answer.

2 THE WITNESS: You say how many people did I see
3 out there. I really didn't pay any attention. It wasn't
4 no mob or anything out there.

5 MR. RONKOWSKI: Q Where was the nearest person?

6 MS. PLACEK: Objection.

7 THE COURT: Overruled.

8 THE WITNESS: The nearest person, I don't know where
9 the nearest person was, sir.

10 MR. RONKOWSKI: Q Now, the police left in a few
11 seconds. Did you watch your son go with the police?

12 A Yes, I did.

13 Q Did you see anybody outside your house when
14 your son left the house with the police?

15 A No, I didn't.

16 Q Were there any kids across the street?

17 MS. PLACEK: Objection.

18 THE COURT: Overruled.

19 THE WITNESS: I didn't pay any attention, sir,
20 whether there were children across the street.

21 MR. RONKOWSKI: Q Well, could you see your son's
22 wrists?

23 A I could see -- you mean when they take him to
24 the police car?

1 Q At any time after the police arrived, could
2 you view your son's wrists?

3 A His wrists?

4 Q His wrists.

5 A Yes, I could.

6 Q Was there anything on it?

7 A Handcuffs.

8 Q How was he handcuffed?

9 A In the back, they put his hands in back and
10 handcuffed him.

11 Q Who did that to him?

12 A The police.

13 Q Who was there when that happened?

14 A My daughter and myself.

15 Q Anybody else?

16 A It was another lady named Marie was there.

17 Q Do you know Marie's last name?

18 A I don't know her last name.

19 Q Where does she live?

20 A I don't really know where she lives at.

21 Q How long have you known Marie?

22 A She's not a friend of mine. She was a friend
23 of my daughter's.

24 Q What was your daughter's name that was present?

1 A Davida Hendricks.

2 Q Anybody besides you, your son, Maria, and
3 Davida?

4 A Was at the house?

5 Q Yes.

6 A That's all.

7 MR. RONKOWSKI: Nothing further.

8 MS. PLACEK: No rebuttal or redirect, your Honor.

9 THE COURT: Thank you, Ms. Hendricks. You may step
10 down.

11 MS. PLACEK: May she remain in the courtroom?

12 THE COURT: You may also remain in the courtroom,
13 if you so desire.

14 (Witness excused.)

15 MS. PLACEK: Your Honor, at this time, we would
16 rest in rebuttal.

17 THE COURT: Petitioner rests in rebuttal.

18 MR. RONKOWSKI: If I could have a brief recess
19 and get on the phone and check on Sergeant Wolf's
20 ability to testify.

21 MS. PLACEK: Is he on standby, your Honor?

22 MR. RONKOWSKI: He's been on standby for quite a
23 number of dates. I've got his home phone number, if
24 need be.

1 MS. PLACEK: I would be real impressed if we knew
2 he was on standby, by phone, for today, instead of quite
3 a number.

4 THE COURT: I can't answer that.

5 MS. PLACEK: Thank you.

6 THE COURT: This case is recessed. We'll call it
7 back shortly.

8 (Whereupon, a short recess was
9 taken.)

10 THE CLERK: Jerome Hendricks.

11 MR. RONKOWSKI: We couldn't agree on a stipulation
12 and the officer is on his way here.

13 THE COURT: You could not agree on a stipulation,
14 you say?

15 MR. RONKOWSKI: Yes. There was an offer of a
16 stipulation that Detective --

17 THE COURT: No. Do you have an agreement?

18 MR. RONKOWSKI: No.

19 MS. PLACEK: Judge, the stipulation --

20 THE COURT: I am not interested in the contents
21 of the stipulation. I am only interested in whether or
22 not you and Mr. Ronkowski have agreed on a stipulation.

23 MS. PLACEK: I asked him to rethink, because he
24

1 asked me to concur on what another officer testified
2 to as --

3 THE COURT: You are not answering my question.

4 Do you have an agreement or don't you?

5 MS. PLACEK: If the State would offer me something,
6 Judge, we might.

7 THE COURT: Passed.

8 (Whereupon, the above-entitled
9 cause was passed, after which
10 the following proceedings were
had:)

11 THE CLERK: Jerome Hendricks.

12 (Witness duly sworn.)

13
14 MR. RONKOWSKI: May I proceed?

15 THE COURT: You may.
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1 ALBERT WOLF,
2 called as a witness on behalf of the People of the
3 State of Illinois-Respondent herein, having been first
4 duly sworn, was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. RONKOWSKI:

7 Q State your full name and spell your last name
8 for the Court Reporter.

9 A Albert Wolf, W-o-l-f.

10 Q How long have you been with the Chicago Police
11 Department?

12 A Over 12 years.

13 Q What is your current rank?

14 A I am a sergeant.

15 Q Now, referring your attention to August 8,
16 1988, where were you assigned?

17 A Assigned as a detective in Area 2, Violent
18 Crimes.

19 Q How long had you been a detective?

20 A I was promoted detective in November, 1981.

21 Q Now, referring your attention to August 8,
22 1988, at about 8:30 p.m., were you in Area 2?

23 A Yes.

24 Q Who was your partner that day?

1 A Larry Nitsche.

2 Q Did he receive a phone call?

3 A Yes, he did.

4 Q Pursuant to that phone call, did you go to a
5 location?

6 A Yes, we did.

7 Q Whose home was that?

8 A To the house of Jerome Hendricks, 255 West
9 117th Street.

10 Q Could you describe what you observed when you
11 arrived at that location on August 8, 1988?

12 A It was a very sizeable crowd, very unruly,
13 intense crowd, scattered about the street, the sidewalk,
14 in the vicinity of the house.

15 Q How many people in the crowd?

16 A Maybe two, three dozen.

17 Q What happened after you arrived there?

18 THE COURT: Mr. Ronkowski, what is the relevance
19 of this testimony?

20 MS. PLACEK: I was just going to object, Judge.

21 MR. RONKOWSKI: It goes toward the mode of why the
22 defendant would call the police and voluntarily go with
23 the police. It's the State's theory of the case.

24 Ms. PLACEK: Judge, this is improper. I'll make

1 the objection. It is improper for surrebuttal.

2 THE COURT: Overruled.

3 Go ahead.

4 MR. RONKOWSKI: Q What happened after you arrived
5 there?

6 A We exited our vehicle, walked through the
7 crowd and approached the front door of 255.

8 Q Then what happened?

9 A The front door was opened by a female and we
10 entered the house.

11 Q And what happened when you entered the house?

12 A We observed Jerome Hendricks on the telephone.
13 He observed us. He put the phone down. We told him we
14 were the detectives he had just called. He stated he
15 wished to cooperate with the police and come with us to
16 Area 2.

17 MS. PLACEK: There will be continuing objection,
18 Judge.

19 THE COURT: Objection is overruled.

20 MR. RONKOWSKI: Q When what happened?

21 A We walked out the front door and walked to our
22 squad car.

23 Q And did the defendant have a seat in your
24 squad car?

1 A Yes. He opened the door and sat in the back
2 seat of the squad car.

3 Q Where was the group of people outside, at
4 that time?

5 A They were in very close proximity of our own
6 presence. They were all around.

7 Q Was the defendant handcuffed at any time?

8 A No.

9 MR. RONKOWSKI: Your witness.

10 CROSS EXAMINATION

11 BY MS. PLACEK:

12
13 Q Officer, before you took the stand today,
14 you were in what is called a witness room outside of
15 this courtroom, correct?

16 A That's correct.

17 Q And, Officer, I'm going to ask you to speak
18 a little louder. I am deaf in this ear. Okay?

19 A Sure.

20 Q The microphone even works.

21 When you were speaking to Mr. Ronkowski,
22 he was showing you reports and you were discussing your
23 testimony, correct?

24 A I was reviewing my report.

1 Q To refresh your recollection, correct?

2 A That's correct.

3 Q And in reviewing your report, in that report,
4 you never wrote any designation or any notation about
5 any kind of large crowd, did you?

6 A No.

7 Q Not only didn't you write any designation or
8 any sort of thing about any large crowd, but what you
9 told us today, from the stand, is what you're purporting
10 to say is what happened, correct?

11 MR. RONKOWSKI: Objection, argumentative.

12 THE COURT: Overruled.

13 MS. PLACEK: Q Correct?

14 A Exactly what happened.

15 Q Exactly what happened.

16 So nobody came from that crowd and hit
17 the defendant on the head or tried to hit him with a
18 stick or two-by-four, did they?

19 A There was -- I walked out the door first,
20 walking to the car. The crowd was all around us. It
21 was a very intense, volatile crowd. There was some kind
22 of physical scuffle. I do not know what that involved.

23 Q By the way, when you say you don't know that
24 that involved, you were with the defendant, weren't you?

1 A Pardon me?

2 Q You were with the defendant, weren't you?

3 A I was walking first.

4 Q So you didn't turn around when this crowd
5 attacked the defendant, you just kept walking forward?

6 A We moved quickly through the crowd.

7 Q By the way, that little part you had just
8 added, did I refresh your memory or did you just come
9 up with that?

10 A I have a distinct recollection.

11 MR. RONKOWSKI: Objection.

12 MS. PLACEK: If I could finish -- I'll withdraw it,
13 Judge.

14 Q You, when Mr. Ronkowski asked you
15 what happened, you didn't mention about anybody hitting
16 the defendant with anything, or any sort of confronta-
17 tion, attacking the defendant, did you?

18 A I relayed the same facts to Mr. Ronkowski
19 that I am to you.

20 Q So in other words, you said, on direct
21 examination, about these people attacking the defendant?

22 A I have --

23 MR. RONKOWSKI: Objection.

24 THE COURT: The objection is sustained. It is

1 argumentative.

2 MS. PLACEK: Q By the way, there is nothing
3 in your report about the crowd getting unruly and moving
4 in, correct?

5 A That's correct.

6 Q Thank you.

7 By the way, it is standard Chicago
8 operating, or standard procedure for the Chicago Police
9 Department to put all those things that are important
10 or vital or out of the ordinary in Chicago Police
11 reports, correct?

12 A Police reports is a summary of the facts of
13 the investigation.

14 Q Did you understand my question, Officer?

15 A I certainly understand it.

16 Q Would you answer it?

17 A That case report is a summary of the facts
18 our investigation revealed and indicates, that report
19 indicates facts pertinent to the investigation.

20 Q So there was nothing pertinent about a large
21 crowd of people attacking the defendant?

22 A Unfortunately, I am not the one who authored
23 the report.

24 Q Did you offer to change it?

1 A No, I did not.

2 Q Have you ever said to your partner, let's
3 change that report, let's make it correct?

4 A No, I did not.

5 Q I see.

6 By the way, there were people in the
7 house with the defendant, weren't there?

8 A Yes.

9 Q His mother?

10 A Yes.

11 Q His sister?

12 A Several family members. I don't recall if
13 his sister or not.

14 Q Could you recognize them?

15 A No.

16 Q Look around the courtroom and see if you see
17 them.

18 MR. RONKOWSKI: Objection.

19 THE COURT: Overruled.

20 THE WITNESS: I have already answered.

21 MS. PLACEK: Q So in other words, you can't
22 remember whether -- what his mother or his sister looked
23 like, correct?

24 A At this point, I would be guessing. I choose

1 not to.

2 Q Thank you.

3 Officer, isn't it true that you went
4 there to arrest the defendant?

5 A No, it's not.

6 Q Isn't it true there is nothing about this
7 call for help, because of this impending crowd, in
8 the Chicago police reports?

9 A I believe you already asked me that. There
10 is nothing in the report about the crowd.

11 Q Or the call for help to the station by the
12 defendant, in the Chicago Police Department report,
13 correct?

14 A I don't know what call for help you are
15 referring to.

16 MS. PLACEK: Exactly. Thank you.

17 That's all, Judge.

18 THE COURT: Redirect.

19 REDIRECT EXAMINATION

20 BY MR. RONKOWSKI:

21
22 Q Your police reports show that the defendant
23 did call at 8:30, on August 8, doesn't it?

24 A Called our station to let us know he was at

1 home, to speak to us.

2 Q You are working with other detectives?

3 A Numerous.

4 Q And other detectives were at the scene?

5 A Yes.

6 MR. RONKOWSKI: Nothing further.

7 RECROSS EXAMINATION

8 BY MS. PLACEK:

9
10 Q What other detectives?

11 A Detective Baker was on the scene, whoever Baker
12 was working with.

13 Q By the way, you did refresh your recollection
14 as to who was present at the scene, when you read the
15 reports, didn't you?

16 A I have a distinct recollection of that scene.

17 Q Then name your brother officers who were
18 present at that scene.

19 A I'm telling you Baker was there. I don't
20 recall if Baker was with anybody. There were several.

21 Q I beg your pardon, I missed the last part,
22 who was with Baker?

23 A I don't recall if Baker was with somebody.
24 It's possibly Ryan was there.

1 Q Possible. Does that mean he may not have
2 been there?

3 A I don't know for sure. I know Baker was
4 there.

5 MS. PLACEK: Thank you.

6 That's all, Judge.

7 MR. RONKOWSKI: Nothing further by the State.

8 EXAMINATION

9 BY THE COURT:

10
11 Q Mr. Wolf, from the date of this arrest, down
12 to and including today's date, have you authored any
13 police reports in this case?

14 A Official police reports, Judge, or talking
15 about notes?

16 Q Notes.

17 A Yes.

18 Q Authored reports or any other thing in writing
19 that memorializes the events of that day?

20 A I have made notes regarding this case. I
21 did not make a formal police report.

22 Q Is there any note, document, or report, or
23 anything else, in writing, prepared by you, that
24 describes or comments upon this crowd that you say was

1 out in front of the defendant's house?

2 A I would have to review all of the notes, your
3 Honor. None come to my recollection.

4 Q Was anyone arrested for mob action or any
5 other offense out in front of the defendant's house?

6 A No.

7 Q Have you read any police reports authored by
8 any other officer in this case that would mention the
9 crowd that you say was out in front of the defendant's
10 house?

11 A None that I recall.

12 Q Is there any report that indicates that when
13 the defendant called the police station, he mentioned
14 anything about a crowd gathered in front of his home?

15 A None that I know of.

16 THE COURT: Mr. Ronkowski.

17 MR. RONKOWSKI: If I could have a moment.

18 Nothing further.

19 MS. PLACEK: Nothing further, Judge.

20 FURTHER EXAMINATION

21 BY THE COURT:

22
23 Q Let me ask you, Mr. Wolf, do I understand
24 correctly, that the defendant requested the police

1 department to transport him to a police facility
2 because of this crowd?

3 A Why he did what he did, I don't know. I can
4 only tell you what happened.

5 Q Did he say that, you know, any words to that
6 effect?

7 A He didn't come out and say it. I think that
8 the environment -- I don't know. I didn't tell him why
9 he did what he did.

10 Q What, if anything, did the police department
11 do to protect the other members of Mr. Hendricks' family,
12 who remained in the house?

13 A I'm not aware of that.

14 Q So the police just took Mr. Hendricks and all
15 the police officers there left?

16 A Mr. Hendricks, when he called us, when I
17 approached him at his house, he did not convey to me
18 that he was in fear of this crowd, that that was his
19 main concern. His main concern was that he was innocent
20 and he wanted to cooperate.

21 Q I understand, but when you say this crowd out
22 in front of his house, you recognized that there was
23 danger, perhaps, to Mr. Hendricks, did you?

24 A It was a tense situation. How far the crowd

1 was going to go, I don't know. We had ample police
2 officers on the scene, to control the situation.

3 Q All the police officers left with
4 Mr. Hendricks?

5 A I can only tell you what I did. I don't
6 know how long uniformed policemen stayed behind.

7 Q But before you and the police officers, who
8 arrived at his home with you, left, nothing was done
9 to secure the person of the other people remaining at
10 the home, is that right?

11 A No, that I am aware of. I immediately left
12 the scene.

13 THE COURT: Mr. Ronkowski?

14 MR. RONKOWSKI: Nothing further.

15 THE COURT: Ms. Placek?

16 FURTHER RECROSS EXAMINATION

17 BY Ms. PLACEK:

18
19 Q Because of impending danger presented by this
20 crowd, did you ever speak to either the defendant's
21 mother or sister, or any other member of that household?

22 A We were only in the house a very brief amount
23 of time.

24 Q Does that mean no, you didn't?

A Are you talking about when we took him?

Q When you took him into custody, yes.

MS. MALLO: Objection.

THE COURT: Overruled.

THE WITNESS: I don't recall.

MS. PLACEK: Q Do you recall whether or not anybody, when you took the defendant into custody, asked the mother or the sister or anyone else present in that household, whether they might want to come along for their own personal safety?

MS. MALLO: Objection.

MR. RONKOWSKI: Objection. Assumes a fact not in evidence.

THE COURT: Overruled.

THE WITNESS: The subject was not taken into custody. He agreed to accompany us. We left the scene. I do not recall any conversation with the mother at that time.

MS PLACEK: Q Or sister?

A Or sister.

Q Or any other member of the household?

A Well, people were there, things were happening. You're asking me for a verbatim account of conversation, I cannot give it to you.

Q Let me ask you, in your account, what was done

1 to secure the safety of other members of the household
2 and the children?

3 A Again, I can only state what I did and what
4 I am aware of.

5 Q What did you do to secure the safety of the
6 house and the mother, sister, other female members, and
7 the children in the household?

8 A Nothing.

9 MS. PLACEK: Thank you.

10 That's all, Judge.

11 THE COURT: Thank you, Mr. Wolf. You may step
12 down.

13
14 (Witness excused.)

15 MR. RONKOWSKI: The People rest.

16 THE COURT: Both sides rest?

17 MS. PLACEK: Yes, Judge.

18 THE COURT: I'll hear argument.

19 THE COURT: You may.
20
21
22
23
24

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OPENING ARGUMENT

BY MS. PLACEK:

Your Honor, in this particular matter, I won't be so bold, nor am I that young in the law to cite the certain basic provisions of the United States Constitution, all which have been trampled on by, in fact, the police in this issue.

In trying to prepare this argument, quite frankly, I have been trying to figure out what exactly the theory of the probable cause or the legitimacy of this arrest is and, quite frankly, I have searched and I have searched in the light most favorable to the State and found none.

If this does not fall into a classic situation of Payton and its prodigies, then no other case can.

Number one, the suggestion -- well, strike that.

The State, in their answer to our case, has never shown you a defendant, who the police were afraid of fleeing. They never showed any exigent circumstances that, in fact, would have prevented the police from going into this man's house, into this man's residence, without a warrant, serving it on this man and,

1 in fact, executing a proper arrest.

2 Since we are starting with a warrantless
3 arrest, the idea becomes then what probable cause or what
4 emergency did they have and what was presented to you.
5 Quite frankly, the State will say, Judge, this is not an
6 arrest at this time. Quite frankly, what we have before
7 the Court is we have, in fact, a consensual situation.
8 After all, what you have is you have a consent of the
9 mother and the sister, you have the consent of,
10 supposedly, the defendant to go with them.

11 We point out that the prodigy of Payton
12 says the police can't use deception and in the use of
13 deception, quite frankly, all consent, is any, is
14 vitiated. In this case, there is no consent, because
15 even if you place the arrest at a later time, no evidence
16 has been introduced to the State that their case got any
17 better.

18 First, let's deal with the situation
19 at the house. All of a sudden, out of thin air, the
20 State would have you believe in the evidence, to their
21 best light, that, in fact, this gentleman either called
22 the police because he felt threatened by a crowd in the
23 neighborhood, which the Court very kindly pointed out
24 in all the parade of officers that we had, that the

1 police didn't even note any kind of crowd threatening
2 the defendant. And we would point out that this becomes
3 more than a mere situation where, well, it wasn't really
4 that important, we handled the situation, for the simple
5 reason that this could have been used at trial by these
6 police officers, against the defendant. What would be
7 more damaging, and this is why it should have been, if it
8 happened the way it was, it should have been in their
9 police reports, than tell you, Judge, or 12 members of
10 the jury, my, God, we were the protectors of this man.
11 We saved him because the neighborhood knew he did it.
12 It never happened.

13 You heard officer upon officer, and one
14 relative of the victim, who comes supposedly forward,
15 a day after -- a date, rather, after the motions have
16 began, and said yes, I was part of the crowd, and none
17 of the other police officers know his name, nor is there
18 any reason for him to come forward, other than a cross
19 examination of police officers, in the previous date,
20 by Defense Counsel.

21 Next, you have the credibility of police
22 officers. Well, we went in there and we said come with
23 us, son, and he came willingly. Well, did he? We stand
24 unimpeached by the family members and by his own testi-

1 mony that, quite frankly, that they came in and when they
2 came in, they grabbed him and handcuffed and took him
3 out, and that's when the arrest took place. And upon
4 what information and what probable cause? Well, there
5 was a murder in the neighborhood and the defendant
6 stood convicted at some previous date, years before, of
7 a crime, not a violent crime. When I say violent, not
8 raising to a category of murder. Well, not only he
9 stood a convicted felon in the neighborhood, but also,
10 we must go one step further, he was the last one seen
11 with, in fact, the victim.

12 That would be fine for the State's
13 Attorneys to argue at this particular time, if that was
14 true, and that does not only come from the mouth of the
15 defendant, in our case in chief, but from the mouth of
16 the State's own witnesses and from the Chicago Police
17 Department. Because, quite frankly, I would point out
18 to the Court that he was not the last one to see the
19 victim alive, that her family members not only saw her
20 alive, but the following day, after this young girl,
21 who has been shown that she was a runaway, who engaged
22 in prostitution, who --

23 MS. MALLO: Objection.

24 MS. PLACEK: Judge, that was the testimony of the

1 police officer.

2 THE COURT: Overruled.

3 MS. PLACEK: From the Court's --

4 THE COURT: Don't argue with Counsel. Address your
5 remarks to me.

6 MS. PLACEK: I apologize, your Honor.

7 That she engaged in prostitution; that,
8 in fact, she was habitually uncontrollable; that she
9 had another male relative in the area who, in fact,
10 lied to her legal guardian, not only lied to her legal
11 guardian, but would take her in; that she was seen in
12 the neighborhood and that she was seen in the neighbor-
13 hood several days after she had run away. Not only
14 that, but that the police believed this report and took
15 her guardian and went out looking for her in a well-known
16 strip.

17 Now, this was some time after, so there
18 goes their claim that he was, in fact, the last one to
19 see this person alive. So where is your probable cause?
20 I don't know. I don't have to know. Where is your
21 mere suspicion? I don't know. My job is to present
22 the Court with the motion.

23 Well, said the police officers, Defense
24 Counsel is wrong, we didn't arrest him when we came to

1 this house. Doesn't matter. It doesn't matter that
2 it seemed like an arrest. It doesn't matter that we
3 stand uncontradicted that he was taken out and hand-
4 cuffed. He consensually came with us. No, says the
5 State, the arrest happens later, later, when we had
6 probable cause.

7 Well, Judge, I would ask the Court, if
8 it needs transcripts. The transcribed testimony has
9 been, in fact, prepared and can be given to you.

10 Other than the two facts, the facts
11 mentioned, what other probable cause have they pre-
12 sented for a later arrest at the station? There is none.

13 So, Judge, under Payton and the prodigies,
14 under all case law, they have shown no exigent circum-
15 stances, no probable cause which, quite frankly, was
16 admitted by the State's Attorney at the first -- at the
17 time the Defense Counsel is claiming the arrest and
18 saying, as a matter of fact, in argument with the Court,
19 stated to this Court, well, Judge, there was no probable
20 cause at that time. It wasn't until we got him down to
21 the station and when we got him to the station, that's
22 when we established probable cause. But all we have
23 heard, time and time and time again, from the State]
24 is the two things I brought up. Well, he was the

1 last known person, which is a lie and which is incorrect;
2 and secondly, Judge, that he has been convicted before,
3 something which cannot be used in Defense Counsel's
4 estimation through case law. And then they said, well,
5 when we got him to the station, we knew it, but there
6 was no evidence presented as to how that evidence, which
7 was nothing, had shifted.

8 For this reason, your Honor, we are
9 asking the Court to, in fact, sustain our motion.

10 THE COURT: State.

11 CLOSING ARGUMENT

12 BY MS. MALLO:

13
14 Thank you, your Honor.

15 Judge, the People maintain that the
16 defendant, strike that, that the detectives, the
17 police department had probable cause for the arrest
18 at the time they arrived at the defendant's home, but
19 we also maintain, Judge, that the arrest didn't take
20 place until the 9th day of August, they day after the
21 defendant left his home and went to the police station,
22 Judge.

23 THE COURT: After the defendant had voluntarily
24 been in the police station for how long?

1 MS MALLO: Judge, for approximately 16 hours.

2 Judge, I am going to rely on a case,
3 People versus Johnson, that can be cited at 187 Il. App.
4 3d 756, and 554 -- 544 N.E. 2d 392.

5 THE COURT: Just give me the Illinois cite.
6 187 Il. App. 3d?

7 MS. MALLO: 756.

8 It's a 1989 case, Judge. I apologize
9 to both you and Counsel, I thought I had copies for both
10 of you. I do not. I will be more than happy to provide
11 those to you.

12 Judge --

13 THE COURT: I have them in chambers.

14 MS. MALLO: Thank you.

15 This is a First District, First Division
16 case, and as I said, it was decided in June of 1989.
17 The Appellate Court addresses, in this case, the issue
18 of arrest and in this case, specifically, at what time
19 the arrest took place.

20 In this case, Judge, the defendant --
21 the police officer went to the defendant's home and
22 asked the defendant if, in fact, he would come to the
23 station. Unlike the case before your Honor, in the
24 Johnson case, the defendant -- the police officers

1 were not invited into the home by the defendant. In
2 Johnson, the police went to the home and similarities
3 in the Johnson case and in the case before your Honor
4 are these, that the Johnson case, as in the case before
5 your Honor, the police never displayed a weapon. In the
6 Johnson case, as in the case before your Honor, the
7 squad car used to transport the defendant to the police
8 station, there was no grill or no device separating the
9 front seat from the back seat of that police car.

10 And, Judge, another similarity between
11 these two cases is that neither situation was the
12 defendant taken from his home in handcuffs. Judge, in
13 the Johnson case, the defendant went to the police
14 station with the police officers and the Court here
15 focused on the intent of the police officers in the
16 understanding of the individual being questioned.

17 Judge, I would ask you to consider here
18 the fact that the testimony from the defendant, from
19 his mother, from his sister, all was that the defendant
20 himself called the police, that the defendant himself
21 invited the police to his home and that the defendant's
22 family member, a female, went to the door, opened the
23 door and invited the police into the home of the
24 defendant and his family. It was a consensual entry by

1 the police.

2 The other thing I would ask you to
3 consider, Judge, is whether other routine procedures
4 associated with arrests were present, such as searching,
5 booking, handcuffing, fingerprinting, and photographing.

6 Judge, I would ask you to consider the
7 facts of the case before your Honor, that in this case,
8 there is no evidence that the defendant was ever finger-
9 printed, handcuffed, booked -- well --

10 MS. PLACEK: Objection.

11 MS. MALLO: There is a dispute to handcuffing.

12 Excuse me, I misspoke.

13 There is no evidence that the defendant
14 was ever fingerprinted, photographed, any booking pro-
15 cess. Judge, the officers testified the defendant was
16 taken from the home, smoking a cigarette, with his hands
17 at his side. He opened the squad door by his own power,
18 got in the back seat of that squad and was transported
19 to the police station. At the police station, he was
20 again allowed to sit in a room. When he walked from
21 the squad into the police station, he was not handcuffed,
22 he was free to walk in of his own accord, into the
23 police station.

24 Judge, I would also ask you to consider

1 the facts of a recent decision. It's the decision
2 that was a rule 23, from the Appellate Court, and I
3 have copies of this for your Honor. I can also provide
4 Counsel with one. And it is the case of the People ver-
5 sus Richard Crim. Judge, Crim cites two cases, People
6 versus White and People versus Bean. I would ask you
7 to consider the decision of the Appellate Court. It
8 was appealed from the Circuit Court of Cook County,
9 No. 85-C-7618, and the number given this case in the
10 Appellate Court is 90-72. It was affirmed by the
11 Appellate Court on February 13 of this year.

12 Judge, in the case of Crim, the police
13 were admitted into Crim's house. Again, a difference
14 between Crim and the case before your Honor is that
15 Crim did not invite the police to his home. In this
16 case, the police went to his home and, again, the police
17 were given voluntary -- were invited in, voluntary
18 consent to enter, and when they were in there, they
19 spoke with the defendant's family members. They were
20 told that the defendant was asleep. They were told this
21 by the defendant's father. And at that time, the police
22 officers informed the father that they were there to talk
23 to the defendant. The defendant got up, dressed himself,
24 went into the living room. He met the defendants and,

1 strike that, the detectives, and the detectives then
2 transported him to Area 2 Headquarters.

3 In this case, the difference between the
4 Crim case and the case before your Honor is the
5 detectives, at that time, arrested the defendant inside
6 his home. They handcuffed him and told him he was under
7 arrest and transported him to Area 2.

8 Judge, I would say that those facts are
9 different than the case before your Honor. And the
10 Appellate Court held that even in the absence of
11 exigent circumstances, voluntary consent to enter will
12 justify a warrantless in-home arrest. Such consent
13 need not be given by the defendant but may be, instead,
14 obtained from a third party.

15 Judge, in the case before your Honor,
16 the defendant invites the police into his home, calls
17 the police, tells them to come over. When the police
18 arrive, they meet with the defendant, allowed entry
19 by a family member, and the defendant voluntarily goes
20 with the police officers.

21 In this case before your Honor, there
22 is no indicia of arrest, no handcuffs, no statement by
23 the police, you are under arrest, as there was in the
24 the Crim case, and, Judge, at that time, the defendant

1 accompanies the officers to Area 2.

2 Judge, we argue the fact that there
3 is probable cause, plus a consensual entry to this
4 home, equals a legal, lawful arrest. That's just
5 assuming arguendo that you do not agree with our
6 position that the arrest took place on the 9th day of
7 August, which is what we contend. The arrest took
8 place the next day, after the defendant had already
9 been taken to Area 2.

10 Judge, I ask you to consider other cases
11 and, again, I apologize to both yourself and Counsel,
12 I thought my file contained copies of these cases. It
13 does not. And I would ask you to consider the case of
14 People versus Creach, C-r-e-a-c-h. This case can be
15 found at 79 Il. 2d 96. It's a 1980 case. It was a case
16 decided by the Supreme Court of Illinois, in February
17 of 1980.

18 Judge, in this case, it, like the case
19 before your Honor, is a case involving a defendant
20 charged with murder. In this case, the Supreme Court
21 of Illinois considers as one of the issues, in rendering
22 its decision, what probable cause was evident at the
23 time the defendant was taken into custody.

24 Judge, the facts of Creach were as

1 follows: The defendant was charged with murder
2 of a woman whose body was found approximately 7:00 A.M.,
3 on the morning of September 25, 1973. He body was
4 found near some CTA tracks in Evanston, and the victim
5 died as a result of stab wounds and a gunshot wound.

6 The defendants had an initial conversa-
7 tion with the police, at which time they were not
8 arrested, and the defendants were arrested at a later
9 time, when probable cause existed. What happened is
10 Creach left the jurisdiction of the State of Illinois.
11 He fled and was in another part of the country. At the
12 time the defendant was taken into custody, however, the
13 officers knew that the defendant had been living off and
14 on with the victim, that the victim was killed, most
15 likely killed after midnight on the date of September 25,
16 and also, Judge, that the last person the victim was
17 seen with -- well, strike that, Judge, I'm sorry, that
18 the defendant last saw the victim at 1:30 A.M., on the
19 date of Septembner 25, and that the victim's body was
20 found about five and a half hours later. The last,
21 the fourth piece of probable cause the officers had
22 was that the defendant left for Ohio in the victim's
23 car.

24 The Supreme Court of Illinois held that

1 that was sufficient probable cause for the defendant's
2 arrest. They reasoned that the victim's body was dry.
3 It had rained that night and it was dry, so that most
4 likely, she had been murdered after midnight. That he
5 said in a conversation to his mother, which was reported
6 to the police, that he had seen the victim about 1:30
7 A.M. Also, his mother knew that the victim, knew that
8 her son was, on and off, living with the victim and also,
9 Judge, knew that the defendant was driving the victim's
10 car, knew that because the defendant called her from
11 Ohio and told her. When he talked to his mother from
12 Ohio, she asked the defendant to come home to Illinois to
13 talk to the police. The defendant did. He contacted
14 the police and the defendant was arrested for the murder
15 of the victim.

16 Judge, I would ask you to consider the
17 language of the Supreme Court in deciding the Creach
18 case. When the Supreme Court decided that probable
19 cause existed for the arrest of the defendant in this
20 case, they said that probable cause for arrest exists
21 when the facts and circumstances, within the arresting
22 officer's knowledge, are sufficient to warn a man of
23 reasonable caution in believing that an offense has been
24 committed and that the person who has been arrested is

1 the one who's committed it.

2 Judge, I would also ask you to consider
3 another case and this case is People versus Fetterman,
4 F-e-t-t-e-r-m-a-n, 14 Il. App. 3d 120. Judge, this is
5 a 1973 case decided by the Appellate Court of the
6 Illinois First District, Third Division. It was decided
7 in August of that year.

8 And, Judge, I think that the reason I
9 find this case persuasive is because in the Fetterman
10 case, the probable cause that the Appellate Court out-
11 lined as sufficient for this arrest of the defendant, I
12 think there are very many similarities between the
13 Fetterman case and the case before your Honor. What
14 happened in this case is that a woman and her infant
15 child were found dead in their apartment. The woman's
16 hands and feet were bound and she was naked from the
17 waist down. The woman and child had been home alone.
18 The husband had left for work in the morning and when
19 he returned from work that afternoon, he found his wife
20 and his child dead in their apartment.

21 The defendant, at the time, Fetterman,
22 worked for Peter Pan studios and, at that time, went
23 into homes of people to take photographs of their
24 children, baby pictures or children's pictures.

1 When the husband found the bodies of his wife and child,
2 the only thing that was different in the home was that
3 there was a receipt in their home from the Peter Pan
4 studios, a receipt that had not been there that morning.
5 The husband did not have any reason to believe there
6 would be a delivery from Peter Pan, but a neighbor said
7 she saw that Mrs., the woman in this case, had had her
8 child's picture taken about a month and a half before and
9 that Mrs. Carella had expected to get the pictures, she
10 didn't know when, but knew she expected to get the proofs
11 of these pictures.

12 When the police officers arrested the
13 defendant in this case, they knew that they were looking
14 for -- they had reason to believe they were looking for
15 someone who would have been a sex offender. The reason
16 for this was that the victim's hands and feet were bound
17 and that the victim, Mrs. Carella, was found naked from
18 the waist down. They also knew that this person,
19 Fetterman, as I have already informed the Court, had
20 been in the home, in Carella's home, about one month
21 before the murders and they knew that he was -- had been
22 the person who had worked for Peter Pan, would have come
23 in and taken the Carella baby pictures.

24 Also, Judge, the entry to the apartment

1 was not forced. There was an inference the police
2 drew from that, that the person who had come into the
3 apartment and committed the murder was someone known
4 to Mrs. Carella. And as I said, she was expecting these
5 baby pictures to be delivered. No one knew what date.

6 And the other thing the police relied
7 upon was that there was pools of blood in the apart-
8 ment and that the defendant must have had blood on his
9 clothing from after committing these murders.

10 Judge, what I would ask you to consider
11 is that they didn't have a name or all they had was this
12 receipt for Peter Pan studios. No photos, was it ever
13 mentioned in the transcript or this reporting in the
14 Appellate Case Reporter that there was any photos there.
15 The only thing they had was that one receipt from Peter
16 Pan Studios, but they did know, Judge, that the person
17 who probably committed this murder was a known sex
18 offender and Fetterman was on parole at the time of
19 these murders, for a sex offense he had committed. He
20 had gone to the penitentiary for rape and was on parole
21 for rape when this murder, these murders I should say,
22 were committed.

23 Judge, in the --

24 THE COURT: Does that mean, Ms. Mallo, that anyone

1 who has a prior conviction for a sex offense could
2 have been arrested?

3 MS. MALLO: No. I'm not suggesting that. I'm
4 suggesting that as other pieces of the puzzle go, to
5 establish the probable cause.

6 And Judge, I am going to ask you now
7 to consider the probable cause in the case before your
8 Honor. That what the police officers was investigating
9 was the murder of a 12-year-old girl, a 12-year-old
10 female. There was ligature marks around the neck. Her
11 body was found in an abandoned garage. The structure was
12 next-door to the defendant's home. Carolina McCoy said
13 that she last saw the victim with the defendant. Yolanda
14 Hill gave the police the same story, that she last saw
15 the victim with the defendant. Paula Townsend said that
16 she heard the defendant say is that okay and the
17 victim responded yes. Paula Townsend said that she saw
18 the victim -- the last time she saw the victim, the
19 victim was walking toward the defendant's house.

20 MS. PLACEK: Objection, Judge, incorrect testimony.

21 THE COURT: The police knew that the defendant was
22 not the last person to see the victim alive, did they
23 not?

24 MS. MALLO: Judge, the evidence -- what they had

1 was an anonymous tip. The people they talked to said
2 the last person they saw the victim with was the
3 defendant, Paula Townsend, Yolanda Hill.

4 THE COURT: But they had other evidence that that
5 was not accurate information, did they not?

6 MS. MALLO: Judge, the police that testified said
7 that when they talked to those people, that's the
8 information they had.

9 THE COURT: The information they had was that the
10 defendant was the last person to be seen with the victim,
11 but they also had information that that was not accurate,
12 didn't they?

13 MS. MALLO: Judge, they had an anonymous tip that
14 someone had seen the victim on August 2. They talked
15 to those other three people who said they had last seen
16 her on August 1, with the defendant.

17 THE COURT: Go ahead.

18 Ms. MALLO: Judge, also consider the fact that the
19 police, while investigating this, ran a background check
20 of the defendant and they learned that the defendant was
21 a convicted sex offender, that he was on parole for that
22 offense, that he had that offense, that offense was that
23 he had raped a 15-year-old female, that there was a
24 choking incident involved in that rape.

1 MS. PLACEK: Objection. That's a misstatement
2 of the testimony as it lies before the Court, as to
3 what they knew, Judge.

4 THE COURT: I will resolve any differences that
5 you lawyers have, in regard to what the evidence shows.
6 This is argument. This is her conception of what the
7 evidence shows. I'll resolve it.

8 The objection is overruled.

9 MS. MALLO: Also, the evidence is the defendant
10 was arrested for sexual assault on another young girl,
11 a 13-year-old girl, and that sexual assault happened
12 at 255 East 117th Street.

13 MS. PLACEK: Excuse me, I have to object. That
14 was Mr. Ronkowski's testimony, not the officer's
15 testimony.

16 MR. RONKOWSKI: I didn't testify in this case.

17 MS. PLACEK: That was what he was attempting to
18 bring in through a rap sheet.

19 THE COURT: The objection is overruled. I will
20 resolve that, Ms. Placek.

21 MS. MALLO: Judge, as I stated, the defendant
22 lived next-door to the structure, to this garage, where
23 the body of the victim was found, and the victim's
24 there, were ligature marks around the victim's neck,

1 her hands were tied behind her back.

2 And I would ask you also to consider
3 that James Hill told the police that the defendant
4 had told him three different versions of the
5 defendant's seeing the victim.

6 MS. PLACEK: Objection, Judge. That was never
7 allowed into evidence. That's a misstatement.

8 THE COURT: The objection is overruled.

9 MS. MALLO: Judge, James Hill stated that the
10 defendant had said, first of all, that he had never
11 seen the victim, that he had also told James Hill that
12 the defendant saw the victim walking down the street,
13 and the third thing the defendant told James Hill was
14 that the defendant saw the victim talking to Mr. Chu.

15 Judge, the defendant, his background
16 check revealed that he was a sex offender, that he had
17 committed a rape, that he had served time for that rape
18 and he was on parole. The body was found next-door to
19 the defendant's home. Three people told the police that
20 the last person they saw the victim with was the
21 defendant, and the defendant gave these conflicting
22 stories to James Hill.

23 Judge, the evidence is clear that the
24 police were invited into the defendant's home. There

1 was a consensual entry and that consensual entry,
2 coupled with the probable cause, is a basis for the
3 arrest.

4 Judge, I would also ask you, and this,
5 I have a copy for you and Counsel, of a decision
6 recently rendered by the Supreme Court of the United
7 States, and it is the case of People, or strike that --
8 New York is the petitioner.

9 THE COURT: I have a copy of that. New York versus
10 Harris. Mr. Ronkowski was kind enough to provide me with
11 a copy, yesterday, of it.

12 MR. RONKOWSKI: On a different case.

13 THE COURT: On a different matter.

14 MS. MALLO: In this case, the Supreme Court held
15 where the police have probable cause to arrest a suspect,
16 the exclusionary rule does not bar the State's use of a
17 statement made by the defendant, outside his home, even
18 though the statement was taken after arrest made in the
19 home, in violation of Payton.

20 Judge, that holding, I know that we
21 haven't discussed a statement, I know we haven't
22 discussed anything along those lines, but I think the
23 analogy, I think an analogy can be made. The Supreme
24 Court talks about the integrity of Payton and what the

1 Payton decision was set down to protect, the integrity
2 of the defendant's home.

3 Judge, I argue that here, there was no
4 violation of Payton. The defendant's home was not
5 violated. The police were invited into the home of the
6 defendant. The defendant called the police, invited
7 them into his home. When the police got there, the door
8 was opened. The door was opened and the police were
9 allowed in.

10 And, Judge, I would ask you to rely on
11 that, to determine that, yes, there was a consensual
12 entry. It is also maintained that there is sufficient
13 probable cause, coupled with that consensual entry, to
14 establish the lawful arrest and, Judge, we still maintain
15 our position that arrest did not take place until the
16 9th of August.

17 Thank you, your Honor.

18 THE COURT: Ms. Placek.

19 CLOSING ARGUMENT

20 BY MS. PLACEK:

21
22 Judge, both Crim and Fetterman, when
23 the Court reads those cases more closely, will see they
24 deal with exclusivity. In other words, essentially,

1 what the card in Crim -- the Peter Pan card in Fetterman
2 dealt with the fact that they speak of a pointing finger
3 almost, Judge, as to probable cause. Now, in this
4 particular case, we don't even have a pointing finger.
5 We don't even have an accurate time of death. And when
6 I say we don't have an accurate time of death, if the
7 Court will remember the original testimony of Detective
8 Nitsche, Detective Nitsche said that when he started out
9 this investigation and when, in fact, the body was found,
10 he wasn't even sure, number one, he identified it as a
11 female by the clothing; number two, he not only identi-
12 fied it as a female by the clothing, but he said he
13 couldn't even tell, necessarily, who it was.

14 That's another thing that whittles away
15 about exclusivity. There is absurdity for the State
16 to stand here and argue that this is the last person who
17 saw the victim alive because, quite frankly, even if you
18 forget about the impugned knowledge that she was seen
19 days, not one day, but at least two days later, on the
20 strip, the simplicity is that the people she talked to
21 and argued with were the last people who even in the
22 statement, closest to the State, saw her alive. Her
23 guardian speaks of the fact that it was until about a
24 half an hour to an hour, and that's from the State's case,

1 that she left not in the direction or going to the
2 defendant's home, for there is no statement, other
3 than a leap of imagination, but she wasn't down the
4 street in a direction, in an easterly direction, and
5 I think if the Court will read the transcript, that's
6 what will be born out, after an argument.

7 As a matter of fact, quite frankly,
8 Judge, the statements that the State speaks of, were
9 taken no as a part of any kind of impugned knowledge of
10 a murder investigation, but as a missing person's
11 report, because, quite frankly, the victim's guardian
12 gave several males; one, I already touched on, Judge,
13 as a possible way, and the police questioned the
14 defendant when this was a missing persons and dismissed
15 it, and held it not reliable.

16 Next, where is the probable cause? Well,
17 the defendant has a conviction. I would point out that
18 what, essentially, the testimony of Nitsche, not as
19 clear-cut as an after-trial preparation of a State's
20 Attorney who tries to get certain evidence in a case,
21 because if the Court remembers, all the detectives
22 testified that they never went back, everything was
23 handled by telephone, about this conviction. Therefore,
24 Judge, the idea of some sort of mirror image crime is

1 absurd and never, in fact -- well, let me put it this
2 way, it's the same fertile imagination and whiff of
3 smoke that the crowd came from, because that also is
4 never contained within the pertinent summary prepared
5 by the Chicago Police Department and if the Court reads
6 the transcript as such.

7 Next, what the State doesn't mention
8 is both Crim and -- Crim especially speaks of timing
9 and when I speak of timing, the bodies were immediately
10 found, a placement of a cause of death, a placement of
11 the last person, the pointing finger.

12 In this instance, Judge, we have no
13 time of death originated, we have no probable cause
14 continued. Even under the report whittling away of
15 Payton by the United States Supreme Court, what,
16 essentially, we have is we have a defendant making
17 statements, inculpatory, after an arrest. Where is the
18 evidence that we have of this in this case, Judge? Not
19 only that, but also, Judge, in the other case that the
20 State cited in Fetterman, the consent was ruled to that
21 the defendant willingly went with the police officers.
22 They spoke of certain things as being inditia of arrest,
23 but interestingly forgotten by the Assistant State's
24 Attorney is that they also saw the Miranda Warnings as

1 an incident of arrest and they also saw the name and
2 the taking of certain vital information from the
3 defendant, at the station, as part of arrest. You have
4 the Mirandizing of the defendant, testified by Detective
5 Nitsche, and you have the age, the date of birth, the
6 full name, and the address of the defendant, taken from]
7 him when he is at the station. What more do you need
8 for booking information?

9 It may not quack -- strike that. It may
10 not be called a duck, but if it walks, if it waddles,
11 and if it quacks, it sure is a duck.

12 Next, the State says well, Judge, look
13 at all these cases, when people consensually came down
14 to the station and then, essentially, the probable cause
15 was established and an arrest was had. Read the cases
16 the State cites. And the one thing you will hear in
17 every one of the cases and the one phrase that will be
18 continually mentioned is the police continued their
19 ongoing investigation.

20 The State said that they disagree with
21 Defense Counsel, with, in fact, the arrest took place
22 at home. Fine. Then show me, excuse me, they should
23 show you were, in fact, the police, even after question-
24 ing this young man or where, in fact, the State's

1 Attorneys presented any evidence that was any more than
2 the evidence they had when they came to the home. If
3 they are conceding or if they are stating, well, no we
4 didn't have enough to arrest him at the house, then,
5 quite frankly, where did their case get any better.

6 Next, if all this information does, in
7 fact, constitute probable cause and since no exigency
8 was shown, where was their warrant, which is still
9 required without a show of exigency? Quite frankly,
10 there is no contest that, in fact, the defendant called
11 the police, under the subterfuge of they wanted to talk
12 to him in his house. He never consented to go with
13 them. Therefore, since they knew they had a ready,
14 willing, and able subject waiting for them at the
15 house, who was cooperating and supposedly, in the words
16 of Officer Nitsche in the transcript, when I asked him,
17 well, when you were at the house, would you have let him
18 go, he said no, then what more do you need for an arrest
19 and why didn't they take that fact to a warrant.

20 The Courts have ruled that what is in
21 the mind of the police at the time of custody is
22 important. Let's see what was in their mind and let's
23 deal with their credibility.

24 The State makes much, well, our case was

1 bolstered by the fact that the defendant, his sister
2 and himself -- well, Judge, if we were to lie in this
3 case, if we want to somehow fictionalize the true
4 account of it, the easiest thing we would have had is
5 we would have had the police kicking the door, pushing
6 it in with their shoulder and saying this is a raid,
7 you are under arrest. But instead, you have three people
8 who go up and didn't lie. They could have made the
9 police out some sort of devils who came and snapped the
10 defendant's neck back and beat him and forced him, with
11 his arms twisted behind him, to go. But they didn't,
12 because they told you what happened.

13 Now, what do we have on credibility on
14 the other side? We have a fictionalized crowd, we have
15 Miranda, not free for you to go, but still not under
16 arrest, we have officers stumbling back and forth on
17 their testimony as to who goes in the house, who doesn't
18 go in the house, how their progress is impeded by this
19 crowd. The plainclothesmen do go in, they don't step
20 in the house, they do go in. Judge, for professional
21 observers, you would have imagined they would have got
22 their stories straight. And then what do you have? At
23 that point in time, you have a cease of an investigation.

24 So quite frankly, Judge, in answer to the

1 State's argument in our final rebuttal, quite frankly,
2 if they didn't have probable cause at the house, they
3 sure didn't do any more investigation to get it later.

4 For these reasons, Judge, we are again
5 asking the Court to sustain our motion.

6 THE COURT: Ms. Placek, if you have the transcripts,
7 I would be delighted to have them.

8 MS. PLACEK: I have them in my office. I believe
9 the State also has their copy.

10 THE COURT: I am not prepared to rule on this
11 motion, but I do want to make some observations about
12 it.

13 As I understand it, it is the position
14 of the police officers that they went to Mr. Hendricks'
15 home, in response to his telephone call, and when he
16 arrived -- when they arrived there, he consented to go
17 to the police station with them, either to discuss this
18 matter and thereby prove his innocence or out of fear
19 of this huge crowd that the police say was gathered out
20 in front of his home. And when he arrived at the police
21 station, he agreed to remain there for 16 hours.

22 And I must tell you that I find that
23 position to be absolutely preposterous. I find it to
24 be preposterous because it is inconceivable to me that

1 a raging mob, as I understood it to be described to me,
2 would be out in front of this man's house, because he
3 is, according to the police, the subject matter of an
4 investigation of what could only be described as a
5 heinous crime and the neighbors are aware of it and
6 they are obviously there, as I understood it, to be
7 threatening this defendant and perhaps other members of
8 his family. In order to give him the protection that
9 he so rightfully deserves for his life and his bodily
10 safety, they take him into custody, contrary to the
11 obligations that they would have as police officers
12 to arrest the persons that are creating the disturbance,
13 to disburse the crowd, and to protect those who may be
14 endangered after they leave.

15 But at the very least, at the very least,
16 you would expect to find at least a scintilla that re-
17 lates to that event in the police reports. And to
18 suggest to me that it does not appear there because the
19 police reports are mere summaries of the events is to ask
20 me to divorce myself from all of the experience, all of
21 the training, all of the education that I have had and to
22 become the proverbial ostrich, with his head in the sand,
23 and I am not so naive. I disbelieve it in its totality,
24 and the testimony of James Hill forces me, even more so,

1 to disbelieve it, rather than to corroborate the
2 police, in my judgement. When I listen to his testimony,
3 along with theirs, I believe it even less. I believe
4 that this defendant was arrested inside of his home,
5 handcuffed, and taken out of his home and taken to a
6 police facility, under arrest, and required to remain
7 there in excess of 16 hours.

8 Now the consequences of that may be
9 something altogether different, but to suggest to me
10 that that didn't happen, under the evidence that is
11 before me, seems to me, to ask me to just completely
12 abandon reasoning.

13 When the police arrived there, to be
14 sure, they were invitees. The defendant does not
15 contend otherwise and I have no reason to doubt that
16 that's precisely the posture in which they arrived
17 there, and I don't have any doubt either that they were
18 admitted voluntarily into the home. They were admitted
19 there ostensibly, for the purposes of talking to the
20 defendant and, normally, when we talk about consensual
21 waiver of constitutional rights, the parameters of the
22 consent dictate what can be done by the police, absent
23 process. Whether it's true when we talk about Payton
24 or not, I am not certain, but, normally, the police can

1 go no further than the consent which was extended to
2 them, and the consent in this instance, as it's testified
3 to both by the police, as I understand it, and the
4 inferences to be drawn from their testimony and the
5 defendant's, that the police were at his home, they left
6 a card, they said they wanted to talk with him, he called
7 them up and invited them to his home to talk, and that
8 was the reason that they were admitted into his home.

9 Now, whether that can, after having
10 gained admittance into his home, the police could then
11 arrest him, without violating Payton, I need not, at
12 this point, decide. I will, during the course of the
13 decision of this case, because I am not altogether sure
14 of what means in terms of whether the law will permit
15 that kind of consensual entry into the man's home and
16 then convert it into a full blown arrest.

17 But in any event, if they could arrest
18 him there or anyplace else, that arrest had to be
19 predicated on probable cause, and I have not read the
20 case that Ms. Mallo has cited to me, I intend to do
21 that perhaps tomorrow or as soon thereafter as is
22 reasonably possible, to determine whether, upon the
23 sparsity of the evidence that they had in this case,
24 the police had probable cause to arrest this defendant.

1 If they did not, then it would seem to me that whether
2 or not there was a Payton violation, that is the unlawful
3 entry into his home, is sufficient, in and of itself,
4 to suppress the arrest, without probable cause, would
5 be in spite of New York versus Harris, in spite of
6 New York versus Harris, because New York versus Harris
7 was an arrest predicated on probable cause, followed by
8 the giving of Miranda at a police facility, which is
9 wholly different from an arrest without probable cause
10 followed by a Payton violation, followed by Miranda
11 Warnings.

12 And so those are the issues which are
13 both factual and legal, that I intend to resolve.

14 Ms. Placek, when -- do you have the
15 transcripts, Mr. Ronkowski?

16 MR. RONKOWSKI: Yes, I have the transcript of the
17 defendant and Detective Nitsche here.

18 MS. PLACEK: I believe you have all of them.

19 MR. RONKOWSKI: The transcript of Mr. Hill and
20 Detective Baker.

21 THE COURT: Mr. Ronkowski, I don't need Mr. Hill's
22 testimony. I took very good notes. I've listened care-
23 fully. I remember him well and I reject his testimony.

24 MS. Placek: With all due respect, I believe

1 Mr. Hill's testimony has the police officer's testimony

2 MR. RONKOWSKI: If yo want me to rip it in half.

3 THE COURT: No. I thought you had it as separate
4 but I'll take it. I don't have to read it. I already
5 know it.

6 MS. PLACEK: I believe there are two days of
7 testimony and today.

8 THE COURT: I don't need today's.

9 MS. MALLO: There would be testimony from
10 February 27 of this year and there would be testimony
11 from March 29 of this year.

12 MS. PLACEK: That would be two transcripts,
13 Judge.

14 MR. RONKOWSKI: I have those two transcripts.

15 THE COURT: Now, in the interim, if you care to
16 bring to my attention any additional authorities, I
17 want them.

18 MS. PLACEK: The setting of limitations?

19 THE COURT: I'm sorry?

20 MS. PLACEK: The setting of limitations of issues
21 as established by the Court, Judge, and we still haven't
22 received the Court's cases. What I would suggest, quite
23 frankly, is something akin to a briefing schedule. I can
24 talk to my co-counsel and have him directly give cases

1 both to yourself, but I suggest we have a cutoff point,
2 perhaps Monday of next week, to submit cases to the
3 Court on the issues, as established by the Court.

4 THE COURT: Well, that would certainly be helpful
5 to me. I don't know that I am going -- you know, well,
6 let me suggest to you the cases, as I understood them,
7 the factual scenarios that I understood Ms. Mallo to
8 give to me insofar as Fetterman and Creach were con-
9 cerned, and Johnson, I don't think you went into the
10 facts of any great extent, but those two cases do not
11 seem to be or seem to be my mind at this point, at any
12 rate, to be factually distinguishable. But Peter Pan,
13 Peter whatever is was, receipt, in one instance, the
14 defendant being in Ohio with the victim's car, within a
15 relatively short time after she is dead, and those kinds
16 of things are much, much different from this case.

17 Essentially, what there is in this case
18 is the police awareness that the victim was found
19 next-door to where the defendant lives. The defendant
20 had a prior conviction for some sort of sex crime. And
21 there is a conflict as to whether or not the police
22 knew whether the defendant was the last person to see
23 her alive and where the police are in possession of
24 that kind of conflicting information as to who it was

1 that the victim was last with, whether they can ignore
2 that and hold up that portion of it, which affords them
3 probable cause and disregard and reject all of the
4 evidence that suggests that there might be some reason
5 to go slower, I'm not certain, but the concept, as
6 enunciated by Ms. Mallo, as enunciated by the Supreme
7 Court, is that probable cause is that degree of cause
8 which would cause a reasonably careful and prudent
9 person and a reasonably careful and prudent person would
10 take into consideration, it would seem to me, the fact
11 that his information that he is relying upon is conflict-
12 ing and to do something to straighten out that conflict,
13 rather than to simply say I have probable cause and
14 disregard everything that suggests you do not. But
15 again, that's something else that I am going to have
16 to resolve and I don't know how that's going to come
17 down, but we shall see.

18 In any event, Mr. Ronkowski, what is
19 your suggestion about a briefing schedule that would,
20 if you choose to do so, I am not ordering you to do
21 that, it would be helpful to have a full expression of
22 your views and the views of the Defense in this case,
23 to the fullest extent that you care to exercise your
24 right to do that, or exercise your option to do it.

1 MR. RONKOWSKI: In a motion like this, the
2 burden is with the defendant. If they want to submit
3 a brief, we'll submit something in response.

4 MS. PLACEK: Judge, that's fine if we -- I am not
5 going to get involved in who's got the burden of proof.
6 If you want to submit simultaneous briefs on this issue,
7 I will receive them. If you don't, that's fine.

8 THE COURT: I will receive whatever is submitted
9 to me and if it's not submitted to me, that's fine.

10 MS. PLACEK: May I suggest the Court set a deadline
11 date.

12 THE COURT: June 8.

13 I'm not going to put the case on the
14 call.

15 MR. RONKOWSKI: What date does the Court wish?

16 THE COURT: I'm thinking about June 29, or some
17 time during the week of June 25, whichever is more
18 convenient to you.

19 MS. PLACEK: How about the 27th of June, Judge?

20 THE COURT: That's fine.

21 MS. PLACEK: Thank you, Judge.

22 THE COURT: Motion is taken under advisement.
23 Order of Court, June 27.

24 (Which were all the proceedings had.)

1 STATE OF ILLINOIS)
2) SS:
COUNTY OF C O O K)

3 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
4 COUNTY DEPARTMENT-CRIMINAL DIVISION

5 THE PEOPLE OF THE)
6 STATE OF ILLINOIS)
7 -vs-) No. 88 CR 12517
8 JEROME HENDRICKS)

9 REPORT OF PROCEEDINGS had of the hearing
10 of the above-entitled cause, before the Honorable
11 LEO E. HOLT, Judge of said court, on the 27th day
12 of June, A. D. 1990.

13 APPEARANCES:

14 HON. CECIL A. PARTEE,
15 State's Attorney of Cook County, by:
16 MR. DOUGLAS SIMPSON and
MS. NANCY COLLETTI,
Assistant State's Attorneys,

17 appeared on behalf of the People;

18 HON. RANDOLPH N. STONE,
19 Public Defender of Cook County, by:
MS. MARIJANE PLACEK,
Assistant Public Defender,

20 appeared on behalf of the Defendant.
21
22
23
24

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1 THE CLERK: Sheet 1, Line 10, Jerome Hendricks
2 in custody.

3 THE COURT: Mr. Simpson?

4 MR. SIMPSON: Yes, your Honor.

5 THE COURT: I have some of your transcripts. There
6 might be a third one. I'm not sure. I'll have to
7 look in my briefcase, or either I may have left one
8 at home.

9 MR. SIMPSON: Fine.

10 THE COURT: The matter of Jerome Hendricks is
11 before the Court for ruling on the Defendant's Motion
12 to Quash his Arrest and Suppress certain statements
13 made by the defendant.

14 I have read the Defendant's Motion, and I
15 have read the transcript of the hearing on his Motion
16 to Suppress.

17 At the beginning, let me indicate to you
18 that I believe that the defendant was arrested at
19 his home in violation of Peyton versus New York. I
20 reach that conclusion for several reasons, one of
21 which may not be accurate, but it is, in my judgment,
22 more probably than not the law, although I concede
23 very readily that there might be some authority to
24 the contrary, and I concede further that the way in

1 which the law is developing, my concept in this
2 regard may be flawed.

3 There isn't any question but that the police
4 officers who entered the defendant's home were admitted
5 into his home voluntarily. And to that extent,
6 Peyton versus New York may be inapplicable. On the
7 other hand, the evidence in the case demonstrates to
8 me that the consensual admission of the police
9 officers into the defendant's home was for the
10 purposes of having a conversation, it appearing from
11 the evidence in the case that the police had left
12 a message at the defendant's home that they wished
13 to converse with him.

14 And upon receiving that message, the
15 defendant telephoned the police station and informed
16 the police that he was willing to have a conversation
17 with them.

18 Now, the general rule of law is that the
19 law abhors a waiver of constitutional rights, and
20 a consensual waiver restricts the police authorities
21 to the reasonable extent of the consent, that is, the
22 police cannot generally go beyond that which has been
23 consented to and still be within the consensual
24 agreement of the parties. Whether that concept is

1 applicable to Peyton, I'm not altogether sure.

2 I reject the testimony of the police that
3 the defendant accompanied them to the police station
4 in order to be free from the potential threat of a
5 mob that had allegedly gathered in front of his house.
6 And I reject that because I do not think the factual
7 basis supports it, nor do I think that the police
8 believed at the time that the defendant was transported
9 to the police facility that that was the basis for
10 their transporting him.

11 I come to that conclusion because nowhere
12 in any police report is there any indication at all
13 that there was, one, a mob in front of the defendant's
14 home, or that the defendant requested or agreed to
15 be taken from his home to a police facility because
16 of the mob, or that the police themselves, being
17 fearful for the defendant, transported him to a
18 police facility for his own safety.

19 There is a proposition of law that, in
20 essence, says that the failure to recite that which
21 would have been recited under normal circumstances
22 amounts to an affirmative assertion to the contrary.
23 And it is inconceivable and inexplicable that if a
24 mob that had, in fact, attacked the defendant while

1 he was with police officials, and they had to scurry
2 him away for his safety and for theirs, it is
3 inexplicable to me that that would not have appeared
4 in some police recordation of that event. And so
5 I reject it as being a fact.

6 I haven't said that a Peyton violation took
7 place. It appears to me that it is of no consequence
8 at all. It is of no consequence that the police
9 violated the consensual entry into his home, and
10 it is of no consequence that they took him from his
11 home under arrest without benefit of a warrant because
12 under the holding of New York versus Harris, which is
13 applicable to this case, the Peyton violation, whether
14 it was a violation as a result of their entry into
15 his home by consent or whether or not it was the
16 classic Peyton violation of non consensual entry
17 into the defendant's home for the purposes of arresting
18 him, New York versus Harris teaches that rightly or
19 wrongly -- and I might suggest from my point of view,
20 wrongly, but my point of view is as relevant as
21 anything that I do imagine being since I think I
22 fully understand the holding in New York versus
23 Harris, whether I agree with it or not, I'm obliged
24 to apply it -- and Harris teaches us that the only

1 violation that could result would be the unlawful
2 entry into the defendant's home, but that did not make
3 his arrest unlawful if there was probable cause.

4 And the only thing that would be suppressable
5 as a consequence of the violation of Peyton would be
6 those statements made by the defendant while in the
7 confines of his home and/or physical evidence seized
8 from him while in the confines of his home.

9 And since neither of those are present in
10 this case, the violation of Peyton is not relevant.
11 And I must determine whether or not there was probable
12 cause for the defendant's arrest.

13 If there was probable cause for the
14 defendant's arrest, then the statements taken from
15 him in the police facility are not subject to being
16 suppressed. Conversely, if there was no probable
17 cause, then the defendant was at the police facility
18 in violation of his 4th Amendment rights, and the
19 holding of Dunaway versus New York and Brown versus
20 Illinois and cases -- and its progeny would be applicable
21 to this defendant's Motion.

22 In determining whether or not there was
23 probable cause to arrest the defendant, scrutinized
24 the record in this case to determine whether or not

1 a reasonably prudent person operating under the same
2 circumstances and factual bases that the police were
3 operating from reasonably believed that a crime had
4 been committed and the defendant committed it.

5 The evidence which supports that, if it
6 does, need not be of the quality that would support
7 a conviction. It may not necessarily rise to the
8 level where a preliminary hearing Judge would find
9 probable cause to bind the defendant over for trial.
10 It must simply be that level of cause that would
11 require a reasonably prudent police officer to
12 operate. That the police officers had reasonable
13 grounds to believe that a crime had been committed
14 can hardly be done.

15 The other aspect of it is whether or not
16 there was enough information for them to believe that
17 the defendant committed the offense. In that regard,
18 the evidence indicates that the victim was found
19 dead in a garage next to the defendant's home, that
20 some five or six days earlier, maybe as much as seven
21 days earlier, the defendant and the victim were seen
22 in conversation with one another with some degree of
23 family opposition to the defendant conversing and
24 having some level of communication or contact with the

1 underaged victim.

2 There is also evidence that the victim's --
3 that the defendant's prior criminal background which
4 disclosed a number of criminal offenses similar in
5 nature, that is to say, that the defendant had been
6 involved with young girls in a criminally sexual
7 manner on one or more occasions. The defendant,
8 also insofar as the police were aware was, if not the
9 last person to be seen with the victim, he was
10 certainly well within their knowledge of being one
11 of the last persons.

12 There is some evidence in this record
13 that the victim was seen alive after August 1, the
14 last day that the record indicates that this defendant
15 saw her.

16 Taking all of the information that the
17 police officers had together, not any one of which
18 in and of itself perhaps being sufficient, but in
19 the totality of the circumstances, it can reasonably
20 be said that the police had probable cause to arrest
21 the defendant for the offense which they had under
22 investigation.

23 Thus, the Court finds that his presence
24 in the police facility was not in violation of his

1 4th Amendment rights, there is no 5th Amendment
2 contention before the Court. Therefore, I find that
3 the statements that the defendant made are not subject
4 to being suppressed, and the defendant's Motion to
5 Suppress is denied.

6 MS. PLACEK: Thank you for your consideration,
7 your Honor.

8 May I suggest that there's certain motions
9 in limine that need be filed, and I prefer filing
10 some of them in writing in this matter.

11 May I suggest that a date be set for the
12 filing of those motions.

13 THE COURT: I can give you a final status date
14 on the third, tenth, seventeenth, or thirty-first
15 of August.

16 MS. PLACEK: May I get my book?

17 THE COURT: Surely.

18 MS. PLACEK: The 3d of August would be fine,
19 your Honor.

20 THE COURT: By agreement date?

21 MS. COLLETTI: Yes, Judge.

22 THE COURT: By agreement August 3, final status.

23 MS. PLACEK: Thank you, your Honor.

24 (Which were all the proceedings had.)

1 STATE OF ILLINOIS)
2 CCUNTY OF C O O K) SS.

3 IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT-CRIMINAL DIVISION

4 THE PEOPLE OF THE)
5 STATE OF ILLINOIS)
6 V) No. 88 CR 12517
7 JEROME HENDRICKS)

8 REPORT OF PROCEEDINGS had in the above entitled
9 cause, before the Honorable LEO E. HOLT, Judge of said
10 court, on the 14th day of January, A.D., 1991.

11 APPEARANCES:

12 HON. JACK O'MALLEY,
State's Attorney of Cook County, by
13 MR. JOHN MURPHY,
Assistant State's Attorney,
14 appeared for The People;

15 MR. RANDOLPH STONE,
Public Defender of Cook County, by
16 MS. MARIJANE PLACEK,
Assistant Public Defender,
17 appeared for The Defendant.

PENGAD/INDY. MUNCIE. IN 47302

SF-IL-24A

ckl

1 THE CLERK: Sheet 2, Line 16, Jerome
2 Hendricks, in custody.

3 (Defendant Present)

4 THE COURT: All right.

5 MS. PLACEK: Good morning, Your Honor.

6 THE COURT: Good morning.

7 MS. PLACEK: Your Honor, for the record,
8 Marijane Placek.

9 Judge, I called the State on Friday,
10 and I have a viral infection in my head which some
11 people might have said I've had for a long time and
12 just not known it. Unfortunately, this one has
13 taken the matter of rendering my hearing twenty
14 percent for approximately-- Well, it's been going on
15 for two weeks.

16 I would be asking, since I don't
17 feel that under this condition, because of health
18 reasons, Mr. Hendricks' case, in fact, be continued
19 for whatever date the Court would, in fact, be
20 convenient. I'm supposed to be over this, according
21 to my doctor, in approximately five days, and be
22 restored to what is normal for me.

23 THE COURT: Miss Vrdolyak, do we have a case
24 set for trial on the 22nd of January?

1 THE CLERK: Yeah, you have a few benches
2 on the 22nd.

3 THE COURT: Is there a jury set?

4 THE CLERK: I don't see one. We have Virgil
5 Bass up.

6 THE COURT: That's all right.

7 THE CLERK: Probably the 23rd would be
8 better.

9 MR. MURPHY: Judge, we have a murder case set
10 for jury on the 28th on Frank Williams, I think. Is
11 that right, Deb?

12 THE CLERK: Yeah.

13 THE COURT: How long is it going to take to
14 try this case?

15 MS. PLACEK: I'm sorry, Judge?

16 THE COURT: How long will it take to try this
17 case, to the best--

18 MS. PLACEK: Ten days. I would expect about
19 ten working days, which will translate to two weeks. I
20 will clear my-- Since this case has been on this Court's
21 docket for so long, I'm clearing my schedule with the
22 other judges, so whatever date is convenient with the
23 Court.
24

THE COURT: January 22nd.

1 MS. PLACEK: January 22nd?

2 THE COURT: Yes.

3 MS. PLACEK: Thank you, Judge.

4 THE COURT: January 22nd. By agreement,

5 Mr. Murphy?

6 MR. MURPHY: Yes, Judge.

7 THE COURT: By agreement.

8 MR. MURPHY: Judge, if I may? Counsel?

9 There's two other matters, Judge.

10 I didn't know counsel would be here
11 before lunch. I'm going to file two motions in this
12 matter. I will run upstairs and get them. I will
13 give them to counsel. It's a motion to amend our
14 answer to discovery to include another case, or
15 evidence of other crimes, and also our intention to
16 proceed under the felony murder theory. I am
17 advising the defense of that at this time.

18 MS.PLACEK: As of-- As with respect to both
19 my client and this Court, that's the reason I'm here,
20 I would ask counsel rather than-- If perhaps he could
21 tender those to Mr. Lufrano, who is the Public
22 Defender in this courtroom, who will be trying it
23 with me, and he will make sure that I get that because
24 I'd like to go home and get back into bed, Judge.

1 MR. MURPHY: Okay.

2 MS. PLACEK: And we will respond to those
3 motions, if necessary, with a written response before
4 the date set for trial, Judge.

5 THE COURT: There are two felony murder
6 counts in your indictment.

7 MR. MURPHY: Yes, Judge. We are going to be
8 asking is that we be allowed to proceed on that
9 theory as to the other felony charges that are in
10 the indictment as well, and in addition to the two
11 that are charged.

12 MS. PLACEK: What I would suggest--

13 THE COURT: You are going to add additional
14 felony murder counts?

15 MR. MURPHY: Not add. I think when the Court
16 sees the motion and the cases cited, you will better
17 understand. I don't believe they have to be charged
18 in order for us to proceed under that theory.

19 THE COURT: All right.

20 MR. MURPHY: There's case law that supports
21 that.

22 THE COURT: We'll take that up on the 22nd.

23 MS. PLACEK: Or if necessary, Judge, before,
24 and I will motion it up.

1 THE COURT: Yeah, you can motion it up
2 before at any time and provide me with any authorities
3 that you choose, and I'll consider it at that time
4 prior to trial.

5 MS. PLACEK: Thank you, Judge.

6 THE COURT: All right.

7 (Whereupon the further proceedings in
8 the above entitled cause were continued
9 to January 22nd, 1991.)
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PENGAD/INDY, MUNCIE, IN 47302
SF-IL-24A

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STATE OF ILLINOIS }
COUNTY OF COOK } ss

I, AURELIA PUCINSKI, Clerk of the Circuit Court of Cook County, in said County and State, and Keeper of the Records and Seal thereof, do hereby certify the above and foregoing to be a true, perfect and complete copy of VOLUME TWO OF A SIX VOLUME RECORD CONSISTING OF THE REPORT OF PROCEEDINGS, ONLY. NO PRAECIPE HAVING BEEN FILED PURSUANT TO THE NOTICE OF APPEAL FILED IN THE APPELLATE COURT UNDER APPELLATE COURT NO. 95-0474.

in a certain cause LATELY pending in said Court, between The People of the State of Illinois. WERE Plaintiffs and JEROME HENDRICKS WAS Defendant.

Witness: AURELIA PUCINSKI,

Clerk of the court, and the Seal thereof, at Chicago

In said County, JUNE 25, 1996.



Aurelia Pucinski
Clerk

AURELIA PUCINSKI, CLERK OF THE CIRCUIT COURT OF COOK COUNTY

95-474
Transcript of Record
Appeal
to

APPELLATE

Court of Illinois
District

FIRST

SUPPLEMENTAL RECORD

Circuit Court No. 88 CR 12517**Trial Judge** LEO H. HOLT**Reviewing Court No.** 95-0474

THE PEOPLE OF THE STATE OF ILLINOIS

VS.

JEROME HENDRICKS

FILED
APP
RT

JUL 15 1996

GILBERT S. MARCHMAN
CLERK

from

CIRCUIT COURT

of

COOK COUNTY, ILLINOIS**COUNTY DEPARTMENT, CRIMINAL DIVISION****ORDER ENTERED**

JAN 1 / 2007

APPELLATE COURT, FIRST DISTRICT

AURELIA PUCINSKI**Clerk of Court**

VOLUME THREE OF SIX VOLUMES

SUPPLEMENTAL RECORD

Per AP/nd

Deputy

RJP.

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF C O O K)

4 IN THE CIRCUIT COURT OF COOK COUNTY
5 COUNTY DEPARTMENT-CRIMINAL DIVISION

6 THE PEOPLE OF THE)
7 STATE OF ILLINOIS)
8) Indictment No. 88 CR 12517.
9 VS)
10) Charge: Murder, etc.
11 JEROME HENDRICKS)

12 REPORT OF PROCEEDINGS

13 BE IT REMEMBERED that this cause came on to be
14 heard the 4th day of February, A. D. 1991, before
15 the Honorable LEO I. HOLT, Judge of said court.

16 APPEARANCES:

17 HON. JACK O'MALLEY,
18 State's Attorney of Cook County, by
19 MR. MATTHEW COGHLAN,
20 Assistant State's Attorney,
21 appeared for the People;

22 MR. RANDOLPH N. STONE,
23 Public Defender of Cook County, by
24 MR. VINCENT LUFRANO,
Assistant Public Defender,
appeared for the defendant.

25 J. P. S. Washington, CSR
Official Shorthand Reporter
Circuit Court of Cook Couty
Criminal Division
2650 South California Avenue

1 THE CLERK: Jerome Hendricks.

2 (Defendant present.)

3 MR. LUFRANO: Your Honor, I am standing in for
4 Miss Placek; she just called and told my secretary
5 that she was presently on trial before Judge
6 Karnezis.

7 THE COURT: Order of court ---Strike that.
8 Motion defendant, February 5th, with subpoenas,
9 for trial.

10 You tell Miss Placek that I am going
11 to hold this case on call from day-to-day; if she
12 commences another trial or is not in my courtroom
13 the day after she completes her trial before Judge
14 Karnezis, I am going to hold her in contempt of
15 court. This case is going to trial and it is going
16 to trial without any further delay.

17 You may also tell Miss Placek, and I
18 will tell her if and when she comes into this
19 courtroom, that I think this is a very sloppy,
20 sloppy, unprofessional way to handle a man's
21 capital case. I am thoroughly and absolutely
22 disappointed with her. This case is going to
23 trial.

24 MR. LUFRANO: I will so inform her, your

Honor.

(Whereupon the proceedings
in the above entitled cause
were continued to the 5th
day of February, A.D.,
1991.)

1 IN THE CIRCUIT COURT OF THE COOK JUDICIAL CIRCUIT
2 COOK COUNTY, ILLINOIS
3

4 THE PEOPLE OF THE)
5 STATE OF ILLINOIS) CASE NO. 88-CR-12517
6 VERSUS) CHARGE: Murder
7 JEROME HENDRICKS)
8

9 REPORT OF PROCEEDINGS had on
10 the 5th day of February, A.D. 1991, before the
11 Honorable LEO E. HOLT, Judge of said Court.
12

13
14 HON. JACK O'MALLEY,
15 State's Attorney of Cook County, by
16 MR. SCOTT CASSIDY, MR. JOHN MURPHY,
Assistant State's Attorneys
appeared for the People;
17

18 MR. RANDOLPH STONE,
Public Defender of Cook County, by
19 MS. MARIJANE PLACEK, MR. VINCENT LUFRANO
Assistant Public Defenders
appeared on behalf of the Defendant.
20

21 SHIRLEY A. MITCHELL, C.S.R.,
22 Official Court Reporter
Markham, Il. 60426
23
24

1 THE CLERK: Jerome Hendricks.

2 THE COURT: You can amend more informal
3 defects in this indictment, but not in such a way
4 as to bring a new charge.

5 If this brings about a new charge, it
6 changes the charge in this case; then, that's an
7 impermissible amendment.

8 MS. PLACEK: We would ask the Court to make
9 its ruling before the selection of the jury.

10 THE COURT: I don't know whether that's going
11 to happen or not. But we will see.

12 It's not going to be of any great
13 magnitude, it seems to me, if I don't get to it
14 before the commencement of the jury selection.
15 But we will see.

16 What other sections of the indictment
17 are we dealing with, Mr. --

18 MR. MURPHY: That's all I have, Judge.

19 THE COURT: Insofar as the other Counts are
20 concerned, Counts 3 and 4, leave is granted to the
21 State to amend Counts 3 and 4.

22 Anything else?

23 MS. PLACEK: At the last court date, Judge,
24 the State, I believe, filed a motion which I

1 received a copy of.

2 I have several motions in limine,
3 including a motion to dismiss. But irrespective
4 of that, I don't know how in order the Court
5 wishes to take that.

6 Also, in this matter, Judge, we have in
7 answer to the Court's previously asked question --

8 THE COURT: Which question is that?

9 MS. PLACEK: Witherspoon.

10 THE COURT: What's the defense's position?

11 MS. PLACEK: We would prefer not
12 Witherspooning at this time, Judge.

13 For the purpose of the record, we would
14 suggest, and I believe that the Court heard by my
15 predecessor several death penalty motions previous
16 in this matter, and made rulings on same.

17 I believe in reading the transcript in
18 preparation for this trial, there was an argument
19 made by Mr. Gant, I believe, that a -- dealing
20 with a Witherspoon jury. And this dealt with
21 generally not Witherspooning irrespective of the
22 decisions being made.

23 We would ask that the Court refuse to
24 Witherspoon same jury.

1 MR. MURPHY: It's my understanding, then,
2 that the defense is asking that the jury not be
3 Witherspooned, but the defendant is not going to
4 execute any waiver at the time?

5 THE COURT: That's my understanding.

6 MR. MURPHY: Then, we would object.

7 We may have a jury that is not requested
8 to make a determination as to capital sentence.

9 MS. PLACEK: We would suggest, Judge, as
10 presented, I believe, in early arguments before by
11 my predecessors, Mr. Lemons and Mr. Gant, that a
12 Witherspoon jury is a guilt prone jury, statistics
13 have shown same.

14 I would suggest that, pursuant to the
15 Statute dealing with the death penalty, that, in
16 fact, there is nothing precluding, if in fact,
17 it's found that for some reason a scrupled juror
18 is present on the 12, or in the alternative, there
19 is not enough jurors to hear, if the guilty verdict
20 is returned, as to the so-called death phase, that
21 the Statute does not preclude the impaneling of a
22 new juror, specifically and only for the purpose
23 of hearing the death penalty.

24 THE COURT: I take it, Ms. Placek, for

1 clarification, you're asking that I postpone
2 Witherspooning until after the jury has
3 deliberated on guilt/innocence.

4 MS. PLACEK: That's correct, Judge.

5 THE COURT: And should the jury return a
6 verdict of guilty of first degree murder, then to
7 Witherspoon the jury, if at all.

8 MS. PLACEK: That's correct, Judge.

9 We would suggest that a Witherspoon
10 jury, in fact, puts an unfair burden on the
11 defendant, not only from a previous study cited
12 during the capital arguments not made by myself,
13 but by other members of my office.

14 But also, Judge, because of the fact
15 that it puts the jury in a guilt prone mood; that
16 is, the punishment is already in issue before the
17 evidence is, in fact, heard.

18 The State is allowed to take the
19 position psychologically and in reality because of
20 Witherspooning, that we are just going through the
21 formality of the trial, and now what we
22 essentially are dealing with is we are dealing
23 with the punishment, if you will.

24 MR. MURPHY: Judge, if I may also indicate, I

1 have asked on numerous occasions since I have been
2 in this courtroom what the defendant's position
3 is, and I understand that is a difficult decision
4 to make.

5 At no time were we ever aware that the
6 defense ever intended to make this motion. And
7 had we been given some case, we would have
8 prepared an appropriate response.

9 At this particular time, I'm not aware
10 of what the authorities are, because for the very
11 first time, to my knowledge, this has come up.
12 And we have no response.

13 THE COURT: Well, I don't know that that's
14 going to disadvantage you, because for many, many
15 years I have taken the position that Miss Placek
16 asserts. I think it's right.

17 And knowing nothing to the contrary, all
18 of the psychological and sociological studies,
19 without a single study to the contrary, tends to
20 come to the conclusion that the death qualified
21 jury is also psychologically conviction prone, for
22 a bunch of reasons. And the studies proliferate,
23 in a sense.

24 And the opponents to that proposition

1 have not published a single study that I am aware
2 of to the contrary.

3 On the other hand, the fact that I am
4 impathetic to that proposition is of no
5 significant relevance, because the law is to the
6 contrary.

7 The United States Supreme Court in the
8 case of -- the case escapes me, the name of it
9 -- but specifically rejected that approach, in my
10 judgment, inappropriately.

11 It specifically rejected the validity of
12 the studies without anything to the contrary being
13 proffered to it on which it could reject those
14 studies; nonetheless, it did, or at least if it
15 didn't reject the conclusion of the study,
16 certainly rejected their applicability insofar as
17 it impenges upon the defendant's 8th Amendment
18 Right.

19 And the Illinois Supreme Court has done
20 likewise. And so, there is not a single case in
21 Illinois that would support the proposition that
22 the Court can avoid the consequences of Wither-
23 spooning on the ground that it diminishes either
24 the defendant's 14th Amendment Right, or his 8th

1 Amendment Right.

2 And because the law is in that posture,
3 I am not only unwilling, but I am barred from
4 chartering new ground in that area.

5 If I were the sole determinate of this
6 issue, and without any studies to the contrary,
7 and given the number of studies that tend to
8 support your position, the situation might be
9 different.

10 But I am not out here free to pick and
11 choose which Court decisions I will follow and
12 which ones I will advocate.

13 So, on that basis, the defendant has a
14 hard choice to make.

15 MS. PLACEK: With due respect to the Court,
16 but anticipating the Court's answer in this
17 matter, the only thing that I would point out to
18 the Court is the Supreme Court -- and I'm
19 speaking of the United States Supreme Court case
20 -- that, in fact, spoke of the prohibition and the
21 rejection of the so-called guilty prone studies in
22 Witherspoon did not deal with a state that, in
23 fact, dealt -- or where the Statute spoke of a
24 two-point jury, as in our death penalty Statute.

1 I would point out, with due respect to
2 the Court, that although the request for a
3 so-to-speak double jury on the death phase, it
4 becomes necessary, has been heard by the Illinois
5 Supreme Court, I would suggest that this Court is
6 hearing it in a different ground in that this
7 Court is hearing it at a time never brought before
8 the Illinois Supreme Court.

9 Basically, the case which the Court
10 speaks of, those death penalty cases involving
11 requests by Defense Counsel for a second jury
12 based on the guilt prone decision, if you will, or
13 the guilt studies and surveys dealing with the
14 Witherspoon issue, deal when a guilty verdict has
15 come back from a Witherspoon jury, and it's at
16 that time Defense Counsel first makes a motion to
17 have that jury disimpaneled, and, in fact, another
18 jury seated.

19 I would suggest, and I would call the
20 Court's special attention to that part of the
21 Statute that does deal with death penalty and
22 suggest that it neither says same jury, the jury
23 who heard the evidence. It is still open.
24 Therefore, quite frankly, when the Court says that

1 it's not in the position of charting new waters,
2 the suggestion is, in fact, that the Court
3 wouldn't be charting new waters, contrary to the
4 case, but, in fact, going to the waters that have
5 never been discovered.

6 THE COURT: Well, I think, to the contrary,
7 that the law in Illinois in this regard is pretty
8 well settled, that if the State elects to treat
9 this matter as a capital offense, one which would
10 make the defendant eligible for a capital
11 sentencing hearing if found guilty of first degree
12 murder, then, the jury is to be Witherspooned at
13 the outset. And the only way to avoid that is by
14 the defendant exercising, again, his pure right to
15 waive a jury at sentencing hearing, which he
16 has a right to do.

17 And I understand the difficulty with the
18 choice, but your motion to bar or to postpone
19 Witherspoon is denied.

20 MS. PLACEK: One thing:

21 In rereading the transcripts this
22 weekend involving the motions that were had by
23 previous Counsel, at the end of that motion, the
24 Assistant State's Attorneys -- not these two

1 gentlemen, but others -- in fact stated that at
2 that time there was a likely possibility that, in
3 fact, there would be a request made by the State,
4 should a finding of guilty on first degree murder
5 in the accompanying eligibility phase, that the
6 State would in all probability ask for the death
7 penalty.

8 To formalize the record, Judge, what I
9 would be asking at this time is I would be asking
10 for an affirmative statement by the State's
11 Attorney.

12 THE COURT: Mr. Murphy.

13 MR. MURPHY: Judge, I thought it was very
14 clear to the defendant.

15 But if it is not, we are treating this
16 case as a capital case.

17 MS. PLACEK: That means there will be such a
18 request at the end?

19 THE COURT: I don't know whether it means
20 that or not.

21 It may very well be at the conclusion
22 of the State's case, even with a finding of
23 guilty, that the State may elect not to proceed to
24 the capital sentencing.

1 That is a prerogative up until -- at
2 any point.

3 MS. PLACEK: You see, that's the problem I
4 have with the Witherspooning issue, Judge.

5 THE COURT: We'll cross that at the
6 appropriate time.

7 But you certainly don't want the State
8 to be bound by its pre-trial determination that
9 they'll seek the death penalty, and not be in a
10 position to back away from that without having
11 committed error. That would seem to me to be a
12 rather peculiar position for the Defense to be
13 in.

14 MS. PLACEK: The peculiarity of the defense's
15 position, unless I get a firm affirmative, is the
16 fact that, number one, in denying my previous
17 motion, that, in fact, we have, so-to-speak, a
18 bifurcated jury, one as to guilt or innocence,
19 just for purposes of the record in clarity, and
20 also as to the Witherspooning issue. And the
21 State, so-to-speak, being able to have the
22 ultimate decision after the case, I am forced to
23 make the decision dealing with Witherspooning not
24 fully -- not fully informed.